

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA	*	CRIMINAL DOCKET NO.: 07-317
VERSUS	*	SECTION: "S" (3)
JERMAINE A. HULBERT	*	
	* * *	

FACTUAL BASIS

If this case were to proceed to trial, the Government would prove the Defendant guilty beyond a reasonable doubt of Counts One and Two of the Superseding Bill of Information. The Defendant, **JERMAINE A. HULBERT**, is charged in each of those Counts with knowingly and intentionally possessing in and affecting commerce a firearm, after having been convicted of a crime punishable by imprisonment for a term exceeding one year; in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2). The Government would establish the following through reliable and competent evidence:

COUNT 1

1. On Monday, July 30, 2007, New Orleans Police Department ("NOPD") Fifth District Officers John Butler and Akron Davis were on routine patrol in the 1200 block of Louisa Street

located within the City of New Orleans and the Eastern District of Louisiana. At approximately 9:00 p.m., as they were driving, the two officers observed an individual, later determined to be the Defendant, **JERMAINE A. HULBERT**, standing in the street and grasping the right side of his waistband in a manner that arose the officers' suspicions. Believing that **HULBERT** might be concealing contraband, Officer Butler called out to **HULBERT** and asked him to walk to the police unit. Instead of complying with the request, **HULBERT** turned in the opposite direction and fled.

2. Officer Butler chased **HULBERT** on foot, and Officer Davis followed in the police unit. During the brief chase, Officer Butler noticed that **HULBERT** never let go of his waistband. Officer Davis was able to pull in front of **HULBERT** cutting off his escape path, and Officer Butler was then able to tackle **HULBERT**. After an ensuing brief struggle, Officer Butler was able to subdue **HULBERT** and place him into handcuffs for officer safety.

3. During the struggle, **HULBERT** made an unsolicited statement to Officer Butler indicating that he was in possession of a handgun. Once **HULBERT** was restrained, Officer Butler immediately retrieved from **HULBERT**'s right front pocket a blue steel, .40 caliber Smith & Wesson semi-automatic pistol. The weapon was discovered to be fully-loaded with twelve (12) hollow point bullets and to bear serial number TZH5957.

4. Officer Butler advised **HULBERT** of his *Miranda* rights and advised him that he was being placed under arrest. Learning that **HULBERT** was a convicted felon, Officer Davis contacted Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") Special Agents Will Tonglet and Greg Johansen in order to interview **HULBERT** for possible federal adoption of the case.

5. Special Agents Tonglet and Johansen interviewed **HULBERT** at the NOPD Fifth District station, and he admitted to the special agents that he was in possession of the firearm at the time of

his arrest. **HULBERT** further admitted that he had purchased the weapon from an unknown individual in the area of Louisa and Urquhart Streets on or about July 5, 2007, for a price of \$50. **HULBERT** indicated that he did not know the individual who sold him the weapon and could not provide any additional information about him. A subsequent NCIC check on the weapon revealed that it had not been reported as stolen.

6. The above-mentioned .40 caliber Smith & Wesson semi-automatic pistol bearing serial number TZH5957 was manufactured in Springfield, Massachusetts, therefore, it has affected interstate commerce. Furthermore, it is a firearm as defined in Title 18, United States Code, Section 921(a)(3) by nature of the fact that it will, or is designed to, or may readily be converted to expel a projectile by the action of an explosive.

COUNT 2

7. On Sunday, February 17, 2008, NOPD First District Task Force Officers Nicholas Williams and Aaron Wiltz responded to a call for service at Club Fabulous located at 810 N. Claiborne Avenue. At approximately 3:13 a.m., the officers arrived at that location in order to investigate a report of a disturbance or fight, and when they arrived, they discovered that at least four (4) other NOPD Officers already were at the scene engaging a large crowd.

8. As Officers Williams and Wiltz approached the crowd, they both observed at least four (4) black male subjects walking away from the crowd, shouting obscenities, and pointing their fingers at someone in the crowd. Believing that those subjects had been involved in the altercation, Officers Williams and Wiltz approached a red Jeep Cherokee that the subjects had entered. The officers directed the driver to turn the vehicle's engine off, but the driver attempted to drive away instead.

9. As the vehicle began to move, Officer Wiltz opened the driver's door in order to remove the driver from the vehicle. As he was doing so, Officer Williams observed a subject, later identified as **HULBERT**, exit the vehicle from the rear passenger door while holding a firearm.

10. Officer Williams immediately drew his weapon and ordered **HULBERT** to drop the gun. **HULBERT** ignored the verbal command, turned in the opposite direction, and fled on N. Claiborne Avenue toward Orleans Avenue. At that time, Officer Williams chased after **HULBERT**.

11. While fleeing, **HULBERT** turned and pointed the handgun in Williams's direction, so Officer Williams immediately fired three (3) shots at **HULBERT** in order to stop the threat to his safety. **HULBERT** was not struck by any of those shots, but he dropped the weapon as he continued to flee. At that time, Officer Williams radioed to other officers in the area in order to inform them that **HULBERT** had discarded the weapon near the intersection of N. Claiborne Avenue and St. Ann Street. Officer Williams requested that the weapon be secured, and two responding NOPD Officers did so shortly thereafter.

12. **HULBERT** eventually was apprehended after a brief struggle in an open field near the intersection of St. Ann Street and N. Derbigny Street by Officer Williams and NOPD Officer Rodney Brown, who had arrived on the scene to assist.

13. The firearm that **HULBERT** had discarded was later identified to be a Glock model 22, .40 caliber semi-automatic pistol, bearing serial number FEU054, loaded with twenty-six (26) rounds of live ammunition contained in a twenty-nine (29) round clip. A subsequent NCIC check on the weapon revealed that it had been reported as stolen under NOPD Item No. F-31443-07. The victim of that offense reported that his vehicle and two Glock handguns located inside had been stolen on Tuesday, June 26, 2007, at approximately 1:40 p.m. from the 900 block of Iberville Street.

14. The above-mentioned Glock model 22, .40 caliber semi-automatic pistol, bearing serial number FEU054 was manufactured in Smyrna, Georgia, therefore, it has affected interstate commerce. Like the weapon described in Paragraph 6, above, it is a firearm as defined in Title 18, United States Code, Section 921(a)(3) by nature of the fact that it will, or is designed to, or may readily be converted to expel a projectile by the action of an explosive. Furthermore, it is a “semiautomatic firearm capable of accepting a large capacity magazine” as described in §2K2.1(a)(3) of the Sentencing Guidelines because it has the ability to fire many rounds without reloading and, at the time of the offense, the firearm had attached to it a magazine or similar device that could accept more than fifteen (15) rounds of ammunition.

At the times of his arrests, **JERMAINE A. HULBERT** previously had been convicted of more than one crime punishable by imprisonment for a term exceeding one year: a conviction on September 17, 1999, in the Criminal District Court for the Parish of Orleans, State of Louisiana, Case Number 408-531 “D,” for Possession of Cocaine, in violation of Louisiana Revised Statute 40:967(C)(2); and a conviction on September 9, 2002, in the Criminal District Court for the Parish of Orleans, State of Louisiana, Case Number 427-603 “D,” for Aggravated Battery, in violation of Louisiana Revised Statute 14:34. **HULBERT** admits that he was in possession of the above-mentioned .40 caliber Smith & Wesson semi-automatic pistol bearing serial number TZH5957 on July 30, 2007, as charged in Count One of the Superseding Bill of Information. He also admits that he was in possession of the above-mentioned Glock model 22, .40 caliber semi-automatic pistol, bearing serial number FEU054 on February 17, 2008 as charged in Count Two of the Superseding

Bill of Information. In doing so, he further acknowledges that said conduct constitutes knowing violations of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).

APPROVED AND ACCEPTED:

Date

JERMAINE A. HULBERT
Defendant

Date

SAMUEL J. SCILLITANI
Attorney for Defendant

Date

R. CHRISTOPHER COX III
Assistant United States Attorney